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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7957 OF 2006

Kolhapur Municipal Corporation
through its Commissioner,
having his office at Kolhapur. ... Petitioner

V/s

Shri Shashikant Shankarrao Jadhav
& ors. ... Respondents

Mr. S.S. Patwardhan for the petitioner.

Mr. M.S. Topkar for the respondents.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 4th JULY, 2007.

P.C.:

1. The petition challenges the order of the Industrial Court in Complaint (ULP) No. 436 of 1998. The Industrial Court has allowed the complaint and held that the petitioner has engaged in unfair labour practices under Items 6 and 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971. The petitioner has been directed to treat the respondents as permanent employees from the date on which they completed 240 days in service and to pay other consequential benefits. As the complainant No.23 had expired, the Industrial Court held that

his legal heirs were entitled to receive the monetory benefits till 1.6.2002 i.e. the date when he expired.

2. The learned advocate for the petitioner submits that the impugned order cannot be implemented by the petitioner since the petitioner does not have vacancies. He submits that the respondents were all temporary employees and, therefore, had no right to be declared as permanent. He further submits that, by the Government Resolution of the year 1999, recruitment in the petitioner's establishment has been banned as establishment expenses are to be reduced. According to the learned advocate, regularization of such employees in service of the respondents and granting them permanency would be contrary to the judgment of the Apex Court in the case of **M.P. Housing Board & anr. v/s. Manoj Shrivastava reported in (2006) 2 SCC 702.**

3. Admittedly, all the complainants i.e. the respondents herein were appointed as drivers after obtaining their names from the Regional Employment Exchange. The respondents were interviewed and passed the selection tests. A ranking list was prepared and thereafter the respondents who were found eligible were issued appointment letters. Thus the entry of the respondents into the service is in accordance with the

proper procedure for selection and appointment of employees. The judgment relied on by the advocate for the petitioners is, therefore, not applicable.

4. Admittedly, there is evidence on record that there are 33 posts which are vacant and thus the respondents could easily be accommodated. In fact the petitioner employed 19 more persons on contract basis. All the respondents have completed 240 days in service. In these circumstances, there is no need to interfere with the order of the Industrial Court.

5. Mr. Topkar, learned advocate for the respondents points out the order dated 19.1.2004 of the Division Bench of this Court in Writ Petition 8438 of 2003 with companion writ petitions, where this Court considered the petitioner's defence regarding reduction of 35% establishment expenses. The petitioner's case was negated by the Division Bench of this Court. A similar defence taken up by the petitioner in this case must, therefore, be rejected.

6. The impugned order of the Industrial Court does not suffer from any infirmity.

7. Writ petition is rejected.

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